

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 04-11836-RCL

TRANS-SPEC TRUCK SERVICE, INC. )  
d/b/a TRUCK SERVICE, )  
Plaintiff )  
vs. )  
CATERPILLAR INC. )  
Defendant )

**PLAINTIFF, TRANS-SPEC TRUCK SERVICE INC., d/b/a TRUCK SERVICES,  
AMENDED ANSWERS TO CATERPILLAR INC.'S  
FIRST SET OF INTERROGATORIES**

The plaintiff, Trans-Spec Truck Service, Inc. ("Trans-Spec") answers the below interrogatories as follows:

**GENERAL OBJECTIONS OF SPECIFIC APPLICABILITY**

1. These answers to interrogatories are qualified by the objections specifically asserted herein and the answers do not constitute a waiver of any objection asserted.
2. Trans-Spec reserves the right to supplement these responses in a timely manner.

**INTERROGATORIES**

**INTERROGATORY NO. 1**

Identify every person whom you expect to offer expert testimony on your behalf at trial and, as to each such person, state the subject matters on which he or she will testify, state the substance of the facts and opinions to which he or she will testify, and summarize the grounds for each opinion to which he or she will testify.

**ANSWER NO. 1**

Trans-Spec has not determined which experts, if any, it will call at trial and reserves the right to supplement this answer in a timely fashion.

*JG*



**INTERROGATORY NO. 10**

Describe comprehensively and in detail the basis for your contention that Trans-Spec's purported claim to recover incidental and consequential damages, damages for loss of use, and costs of additional service employees [as to which see ¶42 of the amended complaint] is not barred by the exclusion of incidental and consequential damages contained in the written warranties Caterpillar gave with respect to the engines and in the extended service contract of which a copy is attached as Exhibit C to the amended complaint.

**ANSWER NO. 10**

Trans-Spec objects to this interrogatory as it poses a question of law. Without waiving and subject to this objection, Trans-Spec states that on multiple occasions, Caterpillar orally waived any such exclusion, including during meetings with Trans-Spec on June 9, 2004 and in or around August 2004.

On June 9, 2004, Cardoza orally extended Caterpillar's warranty on the Trans-Spec C-12 engines until June 21, 2005. Guidotti also attended this meeting, which was held at Milton-CAT's facility in Milford, Massachusetts; was present at Cardoza's representation; and, agreed with it. Guidotti further represented that the problems with the C-12 engines were not Trans-Spec's fault and that Caterpillar would make Trans-Spec whole.

In August 2004, Schoening again orally extended Caterpillar's warranty on the Trans-Spec C-12 engines until June 21, 2005 at a meeting with Howard and Barton held at Milton-CAT's facility in Milford, Massachusetts. Schoening reiterated Guidotti's representation at the June 9, 2004 meeting that the problems with the C-12 engines were not Trans-Spec's fault and that Caterpillar would make Trans-Spec whole. Cardoza attended this meeting.

Additionally, Calderbank and Cardoza have made "off the record" representations to Trans-Spec that Trans-Spec would be made whole for the damage it has suffered as a result of the defective C-12 engines.

**INTERROGATORY NO. 11**

Describe comprehensively and in detail the basis for your contention that Trans-Spec's purported claim for alleged breaches of implied warranties are not barred by the disclaimers of all implied warranties contained in the written warranties Caterpillar gave with respect to the engines and in the extended service contract of which a copy is attached as Exhibit C to the amended complaint.

**ANSWER NO. 11**

Trans-Spec objects to this interrogatory as it poses a question of law. Without waiving and subject to this objection, Trans-Spec states that on multiple occasions, Caterpillar orally waived any such exclusion, including during meetings with Trans-Spec on June 9, 2004 and in or around August 2004.



On June 9, 2004, Cardoza orally extended Caterpillar's warranty on the Trans-Spec C-12 engines until June 21, 2005. Guidotti also attended this meeting, which was held at Milton-CAT's facility in Milford, Massachusetts; was present at Cardoza's representation; and, agreed with it. Guidotti further represented that the problems with the C-12 engines were not Trans-Spec's fault and that Caterpillar would make Trans-Spec whole.

In August 2004, Schoening again orally extended Caterpillar's warranty on the Trans-Spec C-12 engines until June 21, 2005 at a meeting with Howard and Barton held at Milton-CAT's facility in Milford, Massachusetts. Schoening reiterated Guidotti's representation at the June 9, 2004 meeting that the problems with the C-12 engines were not Trans-Spec's fault and that Caterpillar would make Trans-Spec whole. Cardoza attended this meeting.

Additionally, Calderbank and Cardoza have made "off the record" representations to Trans-Spec that Trans-Spec would be made whole for the damage it has suffered as a result of the defective C-12 engines.

#### **INTERROGATORY NO. 12**

Describe with specificity the "particular purpose" for which you allege Caterpillar impliedly warranted the engines would be suitable, and describe comprehensively and in detail all documents and other information Caterpillar had when it contracted with Sterling to sell Sterling the engines that (a) gave it reason to know of that particular purpose and (b) gave it reason to know Sterling was relying on Caterpillar's skill or judgment to select or furnish engines that were suitable for that particular purpose.

#### **ANSWER NO. 12**

Trans-Spec objects to this Interrogatory in that it cannot make any representations as to what documents Caterpillar received from Sterling nor can Trans-Spec make representations regarding the contents of Caterpillar's files. Without waiving and subject to this objection, Trans-Spec states that it is a common carrier for hire, regulated by the Department of Transportation, in the business of transporting general commodities and bulk items including but not limited to oil, aggregate, processed materials, petroleum, and liquid asphalt. Caterpillar warranted that the engines would be suitable for these particular purposes. Caterpillar was well acquainted with Trans-Spec's business, applications, and services due to an ongoing business relationship between the two companies dating back to 1986. From that time, Caterpillar wanted to sell engines to Trans-Spec and Trans-Spec obliged them for fourteen years.

Caterpillar further learned about Trans-Spec's business operations because Trans-Spec purchased the first FLC112 Freightliner truck that had a Caterpillar 3176 engine integrated into it. Trans-Spec agreed to let Caterpillar conduct performance testing on this truck, as part of its research for future development, in 1991-1992. Cardoza attended these tests.

Additionally, Caterpillar learned about Trans-Spec's business operations through its close contact with Trans-Spec personnel as part of its ongoing business relationship with Trans-Spec. For example, in or around 1996, Caterpillar invited and paid for Lind to attend the introduction

04/11/2006

1

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EXHIBITS: See Index

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UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

5

6

----- X  
TRANS-SPEC TRUCK SERVICE, INC.,  
d/b/a TRUCK SERVICE,

7

Plaintiff,

8

vs.

Civil Action No.  
04-CV-11836-RCL

9

CATERPILLAR, INC.,

10

Defendant.

11

12

DEPOSITION OF KEVIN G. HOLMES

13

Monday, April 11, 2005, 9:00 a.m.

14

Tri State Trucking Center, Inc.

15

411 Hartford Turnpike

16

Shrewsbury, Massachusetts 01545

17

18

19

20

21

Reporter: Deborah L. Maren, RPR

22

LegaLink Boston

23

320 Congress Street, Boston, MA 02210

24

(617)542-3500

LegaLink Boston  
(800) 822-3376

EXHIBIT

Exhibit N

04/11/200

80

1 A. Al Cardoza has been giving us specifics as  
2 to what he requests us to do with these engines.

3 Q. What have those specifics been? what has  
4 he been telling you to do with the engines?

5 A. Either replace the flywheel housing or  
6 repair the front engine cover leaks.

7 Q. How would you repair the front engine cover  
8 leaks? Has he been giving you specifics to repair it?  
9 Or is there just a set procedure for doing so?

10 A. Actually, there are set procedures that are  
11 obviously there. And obviously we have to follow those.

12 Q. Has he been telling you to patch any of the  
13 engines or flywheel housings or flywheel housing bolts  
14 or any components?

15 A. There was a unit here, yes, that was  
16 patched.

17 Q. Is patching sufficient for these types of  
18 problems that you've been seeing in Trans-Spec's C-12  
19 engines?

20 MR. GRUNERT: Object to the form.

21 A. Unfortunately so, not in the engine that  
22 was here, no.

23 Q. Do you know why Al Cardoza told you to  
24 simply patch the engine?

04/11/2006

1

A. Specifically, no, I don't. Obviously, I'm 81  
sure, from a cost standpoint, yes.

2

Q. Was it obvious that patching wouldn't be  
sufficient to make this repair on this engine?

3

A. For the vehicle's longevity, yes.

4

Q. Why?

5

A. Because a piece of the engine block was  
broken.

6

Q. How did Al Cardoza tell Tri State to patch  
the engine block?

7

A. He said to put the piece back on and epoxy  
it.

8

Q. How long did it last? Do you know?

9

A. Unfortunately so, I don't know that now. I  
believe that's, you know, a vehicle that has not been  
back here so I would not know that.

10

Q. Did you or -- do you know if the person who  
was dealing with this particular engine from Tri State,  
did that person voice any concern with Al Cardoza  
regarding the insufficiency of that patching?

11

A. I believe there were pictures taken and  
all, yes.

12

Q. Do you have those pictures?

13

A. Unfortunately so, I don't personally. But

14

04/11/2006

1

I do believe there is a disk, yes.

2

Q. Okay. You said that cost consideration was a factor, you thought, in that decision. Could you explain what you meant by that?

3

A. Again, an engine bell housing or flywheel housing repair would be in the vicinity of maybe \$3,000, \$3500 between parts and labor, as opposed to an engine replacement which would be in excess of \$20,000.

4

Q. How much would patching cost?

5

A. Again, the patching would encompass -- probably be about that 32 to \$3500.

6

Q. Okay. From what you've seen, is there a permanent fix for Trans-Spec's types of problems with the engines?

7

MR. GRUNERT: Object to the form and competence.

8

A. Other than replacement, as I mentioned earlier, no.

9

Q. Okay. Does Caterpillar ever authorize a dealer such as Tri State to make a repair pursuant to a warranty and then subsequently refuse to pay it?

10

A. Yes.

11

Q. Could you tell me about that.

12

A. Actually, we've -- we have had claims that we have been authorized to perform and we do get charged

13

14

15

16

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82

UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS	
<u>TRANS-SPEC TRUCK SERVICES, INC.</u>	
DEFENDANT	WITNESS
ATTORNEY, JR.,	ROBERT G. BARTON, NOTARY PUBLIC
ROBERT G. BARTON	

12 SUGGESTED DEPOSITION OF ROBERT G.  
13 BARTON, JR., A WITNESS CALLED ON BEHALF OF THE  
14 DEFENDANT, IN-COURT TECHNOLOGIES, INC.,  
15 PLAINTIFF, BEFORE CAROLYN J. ROGERS, CERTIFIED  
16 STENOPHAGER AND NOTARY PUBLIC, IN AND FOR THE  
17 COMMONWEALTH OF MASSACHUSETTS, AT THE OFFICES OF  
18 CAMPBELL, CAMPBELL, EDWARDS & CONROY, ONE CONSTITUTION  
19 PLAZA, BOSTON, MASSACHUSETTS, ON TUESDAY, MAY 17,  
20 2005, COMMENCING AT 10:00 A.M.

22  
23  
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Andover, Massachusetts 01810  
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2  
3 MR. GRUNERT: The witness is going to read  
4 and sign the transcript under the pains and penalties  
5 of perjury, but notarization of the signature is  
6 waived. Objections except as to the form of the  
7 question are reserved until the time of trial, and  
8 motions to strike are reserved until the time of  
trial.

9 THE VIDEOGRAPHER: We are now on the  
10 record. The date is May 17, 2005. The time is  
11 approximately 9:34 a.m. We are located in the  
12 offices of Campbell, Campbell, Edwards and Conroy in  
13 Boston, Massachusetts. The defendant in the case of  
14 Trans-Spec Truck Services, Incorporated versus  
15 Caterpillar, Incorporated, Civil Action No.  
16 0411836RCL, will take the audiovisual deposition of  
17 Mr. Robert Barton. My name is William Barton, no  
18 relation to the defendant, of In-Court Technologies,  
19 Boston, Massachusetts, and I am the videographer for  
20 this deposition. The stenographer is Carolyn J.

21 Rogers of C. J. Reporting. At this time the  
22 attorneys will introduce themselves for the record.

23 MR. GRUNERT: My name is John Grunert of  
24 the firm of Campbell, Campbell, Edwards and Conroy.

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PAGE 5

1 **APPEARANCES:**  
2 JOHN A.R. GRUNERT, ESQUIRE  
3 Campbell, Campbell, Edwards & Conroy  
4 One Constitution Plaza  
5 Boston, MA 02110  
6 (617) 241-4000/FAX (617) 241-5115  
7 On Behalf of the Defendant Caterpillar, Inc.  
8 CHRISTIAN G. SAMITO, ESQUIRE  
9 Business Name: LLP  
10 Esquire Reporting, LLC  
11 Boston, MA 02110  
12 (617) 400-4500/FAX (617) 400-4501  
13 On Behalf of the Plaintiff  
14 Trans-Spec Truck Services, Inc.

15 **ALSO PRESENT:**  
16 William Barton, Videographer  
17 In-Court Technologies

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1 I represent the defendant Caterpillar, Inc.

2 MR. SAMITO: Christian G. Samito of the  
3 firm Donovan and Hateri, representing Mr. Barton and  
4 Trans-Spec Truck Service, Inc.

5 THE VIDEOGRAPHER: The stenographer will  
6 now swear in the witness.

7 ROBERT G. BARTON, JR.,  
8 a witness called on behalf of the Defendant, having  
9 first been satisfactorily identified by the  
10 production of his driver's license and duly sworn by  
11 the reporter/notary public, testifies and says as  
12 follows:

13 DIRECT EXAMINATION

14 BY MR. GRUNERT:

15 Q. State your full name for the record,  
16 please?

17 A. Robert G. Barton, Jr..

18 Q. What is your date of birth, Mr. Barton?

19 A. 1/1/49.

20 Q. Where do you live?

21 A. 89 Central Street, West Boylston,  
22 Massachusetts.

23 Q. Are you married?

24 A. Yes.

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1 **E H B R X**  
2 DEFENDANT EXAMINATION BY PAGE NO.  
3 Robert G. Barton, Jr.  
4 (Mr. Grunert) 4. 170  
5 (Mr. Samito) 145, 194

7 **E X H I B I T S**  
8 NO. DESCRIPTION PAGE NO.  
9 1 Photocopy of Electronic Calendar 12  
10 2 Flywheel Housing Repair 2002-2004 13  
11 3 Color Copies of Photocopies 62  
12 4 Photocopies of Photocopies 134  
13 5 Photocopies of Photocopies 136  
14 6 Color Copies of Photocopies 136

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PAGE 3

1 Q. Do you have children?  
2 A. Yes.

3 Q. Are you employed by Trans-Spec Truck  
4 Service, Inc.?

5 A. Yes, I am.

6 Q. How long have you been employed by  
7 Trans-Spec?

8 A. Since October of 2003.

9 Q. Who was your employer before October of  
10 2003?

11 A. Santa Fuel.

12 Q. What was the first name?

13 A. Santa.

14 Q. As in Santa Claus?

15 A. As in Santa Claus.

16 Q. Gotcha.

17 A. Bridgeport, Connecticut.

18 Q. Is Santa Fuel -- or was Santa Fuel owned  
19 or affiliated in any way with Joseph Howard?

20 A. No.

21 Q. Was it affiliated in any way with  
22 Trans-Spec?

23 A. No.

24 Q. Is it accurate that you played no role in  
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EXHIBIT

10  
Exhibit 10



1 consistently I should carry to the record.

2 A. Tri State Shrewsbury.

3 Q. Okay. "October 12, 2004, talked with Jim  
4 at MiltonCAT re setting up inspection. Will let me  
5 know. Maybe can be done at night." What inspection  
6 does this refer to?

7 A. These were the inspections for the  
8 Advantage program, the extended warranty that  
9 Caterpillar had available. The cost to us was  
10 \$55,920, and the stipulation was that every truck had  
11 to be inspected by them. There was a certain  
12 criteria it had to meet so it would be able to be  
13 basically insured or warranted with the extended  
14 warranty.

15 Due to our many trucks that were  
16 broken down, I had to try to make arrangements where  
17 we would have trucks available to deliver the product  
18 and have the minimal trucks in being tied up. And  
19 Jim was working this out with me, and the original  
20 plan was to do an inspection at night, but it didn't  
21 work that way.

22 Q. You earlier discussed language on the back  
23 of the sheet registering the serial numbers of the  
24 trucks with Al Cardoza. Do you recall when that

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1 conversation took place?

2 A. That was way back in October of 2003 when  
3 I first went there.

4 Q. That was in one of your first meetings  
5 with Mr. Cardoza?

6 A. Yes, that was at Truck Service when I  
7 first met him.

8 Q. That was at the very first meeting with  
9 Mr. Cardoza?

10 A. Yes, that's when I was introduced to him  
11 at the garage.

12 MR. SAMITO: I have no more questions.

13 MR. GRUNERT: I'm going to have a few.

14 Just give me a minute.

15 REDIRECT EXAMINATION

16 BY MR. GRUNERT:

17 Q. Mr. Samito asked you about documents that  
18 Trans-Spec has related to these trucks beyond the  
19 ones that were included in Howard Exhibits 9 through  
20 30. You referred to documents that Trans-Spec keeps  
21 at 7 Cristo Lane. What documents related to the  
22 trucks does Trans-Spec keep at 7 Cristo Lane?

23 A. I have no idea. Mostly mileage probably,  
24 anything to do with the way they run the office,

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1 you mean by payments?

2 A. Well, such if you paid to buy a flywheel  
3 housing, I'm sure there would be a receipt there of  
4 that.

5 Q. Well, so when you said "receipts" and when  
6 you said "payments," were you referring to the same  
7 type of documents?

8 A. Yeah, basically anything that money is  
9 expended for, I would assume you would get some type  
10 of receipt for it.

11 Q. All right. So stored at 7 Cristo Lane  
12 there are mileage records for each of the trucks  
13 involved in this case, receipts evidencing the  
14 receipt of the truck, of each of those 22 trucks, and  
15 then there are additional receipts evidencing parts  
16 or components for those trucks that Trans-Spec  
17 purchased; correct?

18 A. Parts, components, permits.

19 Q. Will there be things such as scale tickets  
20 or weight tickets kept at the 7 Cristo Lane location  
21 evidencing the weights that these various trucks were  
22 pulling on various occasions?

23 A. I really couldn't answer that question. I  
24 don't know.

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1 receipts, payments.

2 Q. When you said "mileage," what did you mean  
3 by that?

4 A. Well, they had to keep track of mileage  
5 for fuel tax purposes. That is basically where the  
6 corporate office is.

7 Q. Now, what kind of records recording  
8 mileage on the trucks are kept?

9 A. Well, they have to claim so many miles for  
10 fuel tax purposes. I don't know exactly what kind of  
11 records are kept. There are some kind of records.

12 Q. Are the mileage records generated  
13 annually?

14 A. Couldn't tell you.

15 Q. But there are mileage records that record  
16 the mileage on each of these trucks on particular  
17 dates, and those are kept at the 7 Cristo Lane  
18 office; correct?

19 A. I don't know if they're on particular  
20 dates or if they're monthly, annually, quarterly. I  
21 really couldn't tell you.

22 Q. Well, whether they're monthly or annually  
23 or quarterly, they're on a particular date; it's just  
24 you don't know how many dates per year; correct?

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1 Q. Other than the mileage records and the  
2 receipts that are kept at 7 Cristo Lane, what other  
3 records related to these trucks are kept at that  
4 location?

5 A. Probably the fees for registration,  
6 overweight permits.

7 Q. I'm sorry, I missed the first one?

8 A. Overweight permits.

9 Q. Overweight permits.

10 A. Registrations.

11 Q. Bear with me here. I've seen references  
12 to overweight permits. When does a common carrier  
13 such as Trans-Spec obtain an overweight permit?

14 A. Every 12 months you have to have -- from  
15 the Massachusetts Department of Highways, you have a  
16 permit called an overweight permit. You also have to  
17 have an overweight permit to use the Massachusetts  
18 Turnpike. It's basically just another way of  
19 collecting money for the Commonwealth.

20 Q. This is Massachusetts.

21 A. Right.

22 Q. The overweight; is there a particular  
23 weight specified by the Commonwealth that if you're  
24 going to operate a vehicle on the highways of the

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UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS  
NO. 04-11836RCL

TRANS-SPEC TRUCK SERVICE, INC.  
d/b/a TRUCK SERVICE,  
Plaintiff

vs.  
CATERPILLAR, INC.,  
Defendant

AUDIO-VISUAL DEPOSITION of RALPH A. LIND, JR., a witness called by and on behalf of the Defendant, pursuant to the provisions of the Federal Rules of Civil Procedure, before Heather S. Cruz, a Registered Professional Reporter and Notary Public in and for the Commonwealth of Massachusetts, at the offices of Campbell, Campbell, Edwards and Conroy, One Constitution Plaza, Boston, Massachusetts, on Tuesday, May 10, 2005, commencing at 9:37 a.m.

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45 Colonial Drive, Unit No. 7  
Andover, Massachusetts 01810  
(978) 409-9090/fax (978) 409-9091  
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1 P R O C E E D I N G S  
2 THE VIDEOGRAPHER: We are now on the record.  
3 The date is May 10, 2005. The time is approximately  
4 9:37 a.m.

5 We are located at the offices of Campbell,  
6 Campbell, Edwards and Conroy in Boston, Massachusetts.  
7 The Defendant in the case of Trans-Spec Truck Services,  
8 Incorporated, d/b/a Truck Service versus Caterpillar,  
9 Incorporated, Civil Action No. 0411836 RCL.

10 We will now take the audio-visual deposition  
11 of Mr. Ralph Lind. My name is William Barton of In  
12 Court Technologies, Boston, Massachusetts, and I am the  
13 videographer for this deposition. The stenographer is  
14 Heather Cruz of C.J. Reporting.

15 At this time the attorneys will introduce  
16 themselves for the record.

17 MR. GRUNERT: My name is John Grunert with  
18 the firm of Campbell, Campbell, Edwards and Conroy. I  
19 represent the Defendant, Caterpillar, Inc.

20 MR. SAMITO: Christian G. Samito of Donovan  
21 Hatem, LLP. I represent the defendant, Mr. Lind, and  
22 the Plaintiff, Trans-Spec Truck Service.

23 THE VIDEOGRAPHER: The stenographer will now  
24 swear in the witness.

Page 2

1 APPEARANCES:  
2 DONOVAN HATEM, LLP  
By Christian G. Samito, Esquire  
3 Two Seaport Lane  
Boston, Massachusetts 02210  
4 On behalf of the Plaintiff  
5 CAMPBELL, CAMPBELL, EDWARDS & CONROY  
By John A.K. Grunert, Esquire  
6 One Constitution Plaza  
Boston, Massachusetts 02129  
7 On behalf of the Defendant  
8 Also Present: William Barton, Videographer  
In Court Technologies  
One Constitution Plaza  
Boston, Massachusetts 02129  
9  
10 Also Present: Joseph Howard

1 RALPH A. LIND, JR., having been  
2 satisfactorily identified by a Massachusetts driver's  
3 license and duly sworn by the Notary Public, was  
4 examined and testified as follows:

5 MR. GRUNERT: The parties have agreed that  
6 we're going to have the usual stipulations, except that  
7 the witness is going to read and sign the transcript.  
8 So objections except to the form of the question are  
9 reserved until the time of trial. Motions to strike  
10 are reserved until the time of trial. Notarization of  
11 the witness' signature is waived.

12 EXAMINATION BY MR. GRUNERT:

13 Q State your full name, please, sir.  
14 A Ralph Andrew Lind, Junior.

15 Q Have you had your deposition taken before?  
16 A I don't know. I don't think so. Not for this, but.

17 Q Have you had the misfortune on any earlier occasion to  
18 sit in a room like this with a stenographer and have  
19 attorneys question you under oath and have your  
20 testimony taken down stenographically?

21 A Yes.

22 Q What was the occasion for that?

23 A I don't remember.

24 Q Was it --

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1 INDEX  
2 DEPOSITION OF RALPH A. LIND, JR.  
3 Page  
4 Examination by Mr. Grunert 4, 139  
5 Examination by Mr. Samito 113

6 EXHIBITS

7 Nos. For I.D.  
8 1 Driver's Vehicle Inspection Report 25  
dated 10/17/03  
9 2 Repair Order and Invoice dated 6/3/03 28  
10 3 Preventive Maintenance Inspection  
Report dated 1/27/03  
11 4 A Service Sheet dated 9/18/03 29  
12 5 B Service Sheet dated 3/07/03 30  
13 6 Invoice No. 65992 71  
14 7 Invoice No. 98663 87  
15 8 Invoice No. 88068 87

1 A It was something to do with a driver a long time ago  
for Truck Service.  
2 Q This was a case in which you were not a plaintiff or a  
3 defendant, you were a witness testifying in a case that  
4 somebody else had brought?  
5 A Yes.  
6 Q Do you remember who the plaintiff in that case was?  
7 A No.  
8 Q Do you remember who it was who took your deposition?  
9 A No.  
10 Q Were you represented by an attorney at that deposition?  
11 A I don't remember. It was years ago.  
12 Q What's your address?  
13 A 2 Mason Road, Milbury, Mass.  
14 Q Are you married?  
15 A Yes.  
16 Q Children?  
17 A Yes.  
18 Q Are you employed?  
19 A Yes.  
20 Q Who is your employer?  
21 A London Taxis of North America.  
22 Q When you go to work in the morning, where do you go?  
23 A Sudbury, Massachusetts.

EXHIBIT

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Page 5

Page 6

1 serviceability. How easy was it to work on the truck.  
 2 Because the truck is down for as long as it needs to be  
 3 serviced. So the faster you can get it fixed and back  
 4 on the road or serviced and back on the road is what I  
 5 was concerned with.

6 **Q** Okay. Were there particular characteristics of these  
 7 trucks that you were concerned with from a perspective  
 8 of serviceability? Were there particular features that  
 9 you told Mr. Medbery you needed on these trucks in  
 10 order to make them adequately serviceable for what you  
 11 knew Trans-Spec's needs were?

12 **A** As far as features, no. Component locations, yes.

13 **Q** Okay. And were there specific components that you were  
 14 concerned about?

15 **A** Yes.

16 **Q** Which specific components were you concerned about?

17 **A** Battery location. Battery and cable location. Air  
 18 drier. Fuel filter location. Basically all the  
 19 service needs. Everything that required a basic which  
 20 on the A Service Sheets. Every component that had to  
 21 be checked on and serviced, I was concerned with where  
 22 it was located and its accessibility to a technician.

23 My specifications weren't based on that sheet  
 24 you got in your hand.

1 **hauling?**

2 **A** Fire marshall permits. Numerous permits, yes.

3 **Q** Where were -- where would those types of documents be  
 4 kept at Trans-Spec?

5 **A** Copies of them were in my desk or in my filing cabinet  
 6 in my office. And the original was kept with the  
 7 truck. Or a copy was with the truck and one was kept  
 8 at the registry or whoever issued the permit; fire  
 9 department, registry, so on.

10 **Q** As the years passed, would those various permits and  
 11 slips of various types, documents, would they be stored  
 12 somewhere at Trans-Spec?

13 **A** I think I only kept them for a year. Because I would  
 14 copy them over for the next year and make any changes I  
 15 needed to be done and then throw the other ones away.

16 **Q** So as they expired?

17 **A** Threw them away.

18 **Q** You just dump them?

19 **A** Yes. Dump the ones in the truck. I don't know if I  
 20 actually got rid of the ones that I had in my office.

21 **Q** Okay. When Trans-Spec's trucks were hauling aggregate  
 22 or asphalt or various materials that were hauled in the  
 23 dump trailers, would scale tickets be generated in  
 24 order to determine how much material had been

1 **Q** Were there some power take-offs? How many power  
 2 take-offs from the transmission on these trucks were  
 3 there?

4 **A** Depended on the truck.

5 **Q** So on these 22 Sterling trucks, some of them had more  
 6 power take-offs than others?

7 **A** Some had two, some only had one.

8 **Q** Do you know why some had two while some only had one?

9 **A** Because some trucks did multiple duties. They worked  
 10 on dump trailer and tanker.

11 **Q** So the ones that had tanker plus dump trailer had two  
 12 power take-offs?

13 **A** Yes.

14 **Q** Do you remember which trucks it was that had two power  
 15 take-offs?

16 **A** No.

17 **Q** Do you remember how many of the trucks were used for  
 18 those dual purposes as distinct from just delivering  
 19 fuel?

20 **A** No.

21 **Q** The trucks that were equipped to handle a dump trailer,  
 22 do you know about how much of their time was spent  
 23 hauling aggregate or other material in a dump trailer  
 24 as contrasted with hauling fuel?

1 **delivered?**

2 **A** Scale tickets you mean I generate?

3 **Q** No. No. I assume that the trucks --

4 **A** Getting back into the documents the driver had. No. I  
 5 don't know what the driver had for documents other than  
 6 the driver's inspection report.

7 **Q** Okay.

8 **A** I could guess, yes, but because I've seen scale houses  
 9 at different locations, but I've never dealt with the  
 10 scale tickets.

11 **Q** Getting back to the process of specing the Sterling  
 12 trucks that were involved in this case. Did you have  
 13 any discussions particularly with Mr. Medbery  
 14 concerning the C-12 engines?

15 **A** I don't think so. I don't know. Maybe as far as  
 16 serviceability. But I don't remember a specific  
 17 conversation.

18 **Q** Did you have any conversations with him concerning the  
 19 fly wheels or the fly wheel housings?

20 **A** Not that I know of.

21 **Q** In connection with the process of specing these trucks,  
 22 did you have any conversations with Mr. Calderbank?

23 **A** Only as far as my recollection of Boca Raton. I don't  
 24 remember any specific conversations I had with him.

1 **A** No, I don't. I didn't dispatch the trucks so I didn't  
 2 know what they were doing.

3 **Q** Were the trucks that were equipped to handle a dump  
 4 trailer used for that purpose more during the warm  
 5 months than during the winter months?

6 **A** Yes.

7 **Q** Were they used for that purpose principally during the  
 8 warm months?

9 **A** Dump trailer, yes. Mostly in the summer.

10 **Q** Okay. My question was pretty unclear. The trucks that  
 11 were equipped to handle a dump trailer, during the  
 12 summer months, was hauling aggregate and other material  
 13 in a dump trailer what they were mostly used for during  
 14 the summer?

15 **A** Yes.

16 **Q** And then during the winter months they would be  
 17 switched over to fuel delivery?

18 **A** To tanker. Yes.

19 **Q** You mentioned early on when we were talking about the  
 20 documents that you prepared, you mentioned weight slips  
 21 or overweight slips?

22 **A** Yes.

23 **Q** And I take it that you also filled out other paperwork  
 24 for various types of permits that were necessary for

1 **In connection with specing the Sterling trucks involved  
 2 in this case, did you have any conversations with  
 3 Mr. Cardoza from Southworth-Milton?**

4 **A** Some conversations I believe.

5 **Q** What conversations did you have with Mr. Cardoza in  
 6 connection with specing these trucks?

7 **A** I don't know if it was actually in specing the trucks,  
 8 more as it was the ability of the engine as far as  
 9 horsepower and torque ratings.

10 **Q** Tell me what you remember about the conversation or  
 11 conversations you had with Mr. Cardoza in connection  
 12 with these Sterling trucks.

13 **A** I don't really remember specific conversations. I know  
 14 we talked about the engines. Their ability. The  
 15 horsepower ratings. The torque ratings. What they  
 16 were suppose to be able to do. I don't remember the  
 17 actual conversations.

18 **Q** Other than the torque ratings and the horsepower  
 19 ratings, what do you remember Mr. Cardoza telling you  
 20 about what the engines were suppose to be able to do?

21 **A** I don't. I don't remember.

22 **Q** So what you remember of getting from him is torque  
 23 ratings, horsepower?

24 **A** Uh-huh. Yes.

1 Q And you remember that you talked with him about other  
 2 things, but you simply don't recall what was said?  
 3 A Correct. I talked to Al a lot and about many different  
 4 things, and I can't remember what we talked about.  
 5 Q Did you talk with anyone other than Mr. Cardoza from  
 6 Southworth-Milton during the process of specing out the  
 7 Sterling trucks?  
 8 A No.  
 9 Q Did you talk with anyone from Caterpillar in the  
 10 process of specing out these trucks?  
 11 A Not that I remember. No.  
 12 Q What discussions do you remember having with Mr. Howard  
 13 in the process of specing out these trucks?  
 14 A We talked a lot about the trucks and what he thought.  
 15 These trucks were suppose to be the last truck, the  
 16 right truck for our job. And we spent a lot of hours  
 17 talking about many things. Drive shafts and rear  
 18 axles. The engine in particular. We thought it was  
 19 the right engine. The cab design. The doors.  
 20 Mirrors. Everything. We talked about a lot of things.  
 21 Cruise control.  
 22 Q When you spoke -- when you spoke with him about the  
 23 rear axil, what was the discussion on that subject?  
 24 A Well, we had Rockwell rear axls in our Freightliners

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1 Q Dick Witcher.  
 2 A Minuteman Trucks.  
 3 Q Do you remember who was there from Sterling?  
 4 A I don't know his name. I could picture the guy but I  
 5 don't know his name.  
 6 Q Did you make any notes at that meeting?  
 7 A No, sir.  
 8 Q What was the purpose of that meeting?  
 9 A We were going to see the truck come off the line and  
 10 make any changes at the end of the line that we thought  
 11 would benefit serviceability of the vehicle.  
 12 Q So you actually saw a truck that met the specifications  
 13 that Trans-Spec had given Sterling, you actually saw a  
 14 truck of that type fully assembled?  
 15 A We saw a truck that they thought would meet our  
 16 specifications. I believe it was one of our trucks.  
 17 Q And did you inspect it after it came off the end of the  
 18 assembly line?  
 19 A Yes.  
 20 Q Did you have any changes that you requested?  
 21 A Yes.  
 22 Q What changes did you request?  
 23 A Air drier location. That I remember specifically. I  
 24 believe battery location and battery cable length.

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1 which were an all-wheel drive. They had an inter-axil  
 2 lock and we decided -- he decided that to go with an  
 3 anti-lock braking traction control system or something  
 4 to that effect, and it was a simple conversation as to  
 5 eliminating the axil lock on the Sterlings because we  
 6 saw what kind of damage they could do in the  
 7 Freightliners when the driver didn't know how to use  
 8 it. So specifically. And stuff like that.  
 9 Q What do you remember talking with him about so far as  
 10 the drive line was concerned?  
 11 A I know he chose to go with a Spicer. I believe a  
 12 Spicer drive line over the Rockwell drive line or the  
 13 Meritore drive line because of Merko Bigward's  
 14 recommendations.  
 15 Q Because of?  
 16 A Merko Bigward. A Meritore rep. He didn't recommend  
 17 his drive line. He recommended actually his  
 18 competitor.  
 19 Q And the person's name is Merko Bigward?  
 20 A Yes.  
 21 Q Is Merko Bigward the person that Jay Howard dealt with  
 22 in connection with choosing a Meritore transmission?  
 23 A Possibly.  
 24 Q Do you know where Mr. Bigward operates out of?

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1 Keep going back to those because I remember those  
 2 specifically were one of my complaints.  
 3 Q Were there any other changes that were requested either  
 4 by you or by Mr. Howard?  
 5 A I don't remember any others.  
 6 Q Were there any particular features of the trucks that  
 7 Trans-Spec had ordered that were discussed at that  
 8 meeting other than the air drier location and the  
 9 battery location and the battery cable length?  
 10 A I don't remember.  
 11 Q Was there any discussion of the engine?  
 12 A Not that I can remember. No.  
 13 Q Was there any discussion about the transmission?  
 14 A Again, not that I can remember.  
 15 Q Was there any discussion of the design of the frame?  
 16 A I don't know. Might have been. See, I was more  
 17 concerned with the serviceability of the vehicle. I  
 18 don't know what he talked about. I didn't discuss with  
 19 anybody anything other than the serviceability of the  
 20 truck and what I thought would make it easier for me to  
 21 service. You're getting into components, and I wasn't  
 22 involved in the components per se.  
 23 Q There was no discussion of fly wheels or fly wheel  
 24 housing, I assume?

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1 A No. I don't think he's our rep anymore in  
 2 Massachusetts.  
 3 Q Did you accompany Mr. Howard to a meeting up in Saint  
 4 Thomas, Ontario concerning these trucks?  
 5 A Yes, I did.  
 6 Q Is that the only meeting that you attended with  
 7 Sterling representatives in connection with specing  
 8 these trucks?  
 9 A The only meeting. I believe it is. I don't remember  
 10 any others.  
 11 Q Apart from that meeting, did you talk with any people  
 12 from Sterling concerning these trucks during the  
 13 process of specing them?  
 14 A Other than Don Medbery?  
 15 Q Don Medbery works for Minuteman, right?  
 16 A Sterling. Not that I'm aware of.  
 17 Q How long did you spend in Ontario with Sterling?  
 18 A I believe we were there two days. I'm not 100 percent  
 19 sure.  
 20 Q Was anyone from Southworth at that meeting?  
 21 A I don't remember.  
 22 Q Was anyone from Caterpillar at that meeting?  
 23 A I don't remember. I remember me, Jay, Don Medbery and  
 24 I believe Dick Witcher.

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1 A Not by me.  
 2 Q Not that you remember?  
 3 A Correct.  
 4 MR. GRUNERT: I'm going to show him this  
 5 document.  
 6 MR. SAMITO: Is it in this packet that you  
 7 gave me?  
 8 MR. GRUNERT: Yes, it is.  
 9 MR. SAMITO: Do you know where, so I could  
 10 follow along?  
 11 MR. GRUNERT: Probably right on top.  
 12 MR. SAMITO: Okay.  
 13 THE VIDEOGRAPHER: Could I change tapes at  
 14 this time?  
 15 MR. GRUNERT: Sure. This is a good time.  
 16 THE VIDEOGRAPHER: The time is approximately  
 17 11:28. We are off the record for a tape change.  
 18 (Off the record.)  
 19 THE VIDEOGRAPHER: We are on the record. The  
 20 time is approximately 11:29.  
 21 Q Mr. Lind, let me show you a sample document from a  
 22 mound of documents that I recently obtained from  
 23 Minuteman Trucks.  
 24 As a result of your work at Minuteman Trucks,

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1 I don't remember, I didn't know that was dropped off by  
 2 Colony, but we did have a truck dropped off that we  
 3 examined and I went over that truck.  
 4 **Q Do you remember -- you don't remember who dropped it**  
 5 off?  
 6 **A I don't.**  
 7 **Q But an AT-9513 was dropped off at some point?**  
 8 **A Yes.**  
 9 **Q And you examined it?**  
 10 **A Yes, I did.**  
 11 **Q What did you think of it?**  
 12 **A I thought it was a nice truck, one that we could use.**  
 13 **Q Do you remember what kind of engine it had?**  
 14 **A It had a -- I think it had a C-12 in it.**  
 15 **Q Did you examine the engine?**  
 16 **A Yes, I did.**  
 17 **Q What did you think?**  
 18 **A I thought it was, again, I thought it was the right**  
 19 **engine. It looked like -- that truck looked like**  
 20 **something we could work with. It would do what we**  
 21 **wanted.**  
 22 **Q Did you have any complaints about the engine or the**  
 23 **AT-9513 that you examined?**  
 24 **A Minor cosmetics and component locations like I stated**

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1 suitable for Trans-Spec's business purposes?  
 2 MR. GRUNERT: Object to the form.  
 3 **Q You can answer.**  
 4 **A Yes.**  
 5 **Q Did Mr. Cardoza show you that the C-12 was suitable for**  
 6 **80,000 gross commercial weight vehicles in New England?**  
 7 **A 80,000 vehicles?**  
 8 **Q 80,000 gross commercial weight vehicle.**  
 9 **A The gross commercial weight rating, yes.**  
 10 **Q What did Al Cardoza say about serviceability of the**  
 11 **trucks?**  
 12 **A I don't remember talking to him about serviceability.**  
 13 **I knew how to service a truck, so I didn't really talk**  
 14 **to him about stuff like that.**  
 15 **Q Well, you said earlier that that was one of the main**  
 16 **concerns that you had in terms of serviceability of the**  
 17 **engines. Did you discuss that at all with Al Cardoza?**  
 18 **A No.**  
 19 **Q You didn't. Okay. Do you recall what sort of data the**  
 20 **documents showed?**  
 21 **A The computer printouts. It was a graph type document**  
 22 **that printed out -- had line graphs that would show --**  
 23 **on one side it had horsepower ratings and then grades**  
 24 **of the road and then the line would go -- it was just a**

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1 earlier in the -- where some things were located on the  
 2 truck I didn't particularly care for. Air dryers, oil  
 3 filters, the battery box locations. But as far as the  
 4 layout of the truck, I thought it was good.  
 5 **Q Who is Don Medbery?**  
 6 **A I believe he's a salesman -- he was a salesman for**  
 7 **Minuteman Trucks.**  
 8 **Q When did you first meet Mr. Medbery?**  
 9 **A Sometime during the specing, potential purchasing of**  
 10 **the Sterlings.**  
 11 **Q Did he speak to you or?**  
 12 **A I spoke to Don quite a few times. I've even been to**  
 13 **his house and worked on some of his computers, so.**  
 14 **Q What did Mr. Medbery tell you specifically regarding**  
 15 **Trans-Spec's truck purchase, outside of the computer**  
 16 **conversations, but focused on the truck purchase?**  
 17 **A I only remember him saying he was the salesman for**  
 18 **Minuteman Trucks and he was potentially selling the**  
 19 **trucks to us. And he basically stopped by our lot for**  
 20 **just to let us know he was still around and -- I don't**  
 21 **remember a lot of the conversations I had with him. I**  
 22 **basically tried to avoid him.**  
 23 **Q Did Al Cardoza make any representations concerning the**  
 24 **suitability of the C-12 for Trans-Spec's business**

1 basic graph that showed you how the truck would react  
 2 to certain conditions. Or the engine, not the truck.  
 3 **Q How long did you spend with Mr. Cardoza plugging in**  
 4 **these various conditions?**  
 5 **A In total, I have no idea.**  
 6 **Q Did it happen at one meeting or was it --**  
 7 **A No. No. No. It was done it a few times. When Jay --**  
 8 **when Al would print something out, I would tell Jay**  
 9 **what Al come up with and he would try different final**  
 10 **drive ratios, transmissions. We were also going for**  
 11 **fuel mileage, so axl ratios meant a lot. How the**  
 12 **truck would take off with a load, but it also had to**  
 13 **get to the right road speed. So it was a lot of**  
 14 **variables.**  
 15 **Q Earlier you spoke about a trip to Canada and an**  
 16 **examination of the Sterling factory when the trucks**  
 17 **were being built. Did you meet any Caterpillar**  
 18 **employees during that visit?**  
 19 **A I don't remember a CAT employee.**  
 20 **Q Okay. I would like to show you a document to mark.**  
 21 **MR. SAMITO: I'll show it to you. I don't**  
 22 **have another copy of that.**  
 23 **MR. GRUNERT: I've got the original. Do you**  
 24 **want to just refer to the deposition --**

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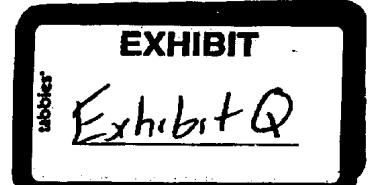
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1 **applications?**  
 2 **A Al Cardoza, yes.**  
 3 **Q What were those representations?**  
 4 **A As far as the C-12s, he had computer programs that**  
 5 **showed printouts of what the engine was capable of**  
 6 **doing. He could do drivability chart or graph of the**  
 7 **way that the engine would perform in certain**  
 8 **conditions.**  
 9 **Q Was it a Caterpillar specing program that he used?**  
 10 **A I believe it was something like that. I don't know**  
 11 **exactly.**  
 12 **Q And did he show you printouts?**  
 13 **A Yes.**  
 14 **Q Did you view the printouts?**  
 15 **A Yes.**  
 16 **Q Did you see him input the data?**  
 17 **A Yes. We tried -- he was in my office with the laptop**  
 18 **on numerous occasions changing transmission final drive**  
 19 **ratios, rear axil ratios, imputing different data to**  
 20 **come up with different startability of the trucks, how**  
 21 **it would take off from a dead stop with a load and**  
 22 **certain road conditions. Degraded the road and stuff**  
 23 **like that.**  
 24 **Q Did he show you based on that program that the C-12 was**

1 **MR. SAMITO: We can. Yeah. From -- I assume**  
 2 **that you had it.**  
 3 **MR. GRUNERT: Rather than mark it.**  
 4 **MR. SAMITO: That would be fine if we use**  
 5 **that.**  
 6 **MR. GRUNERT: This is an exhibit that --**  
 7 **actually several exhibits that were marked at the first**  
 8 **day of Mr. Howard's deposition.**  
 9 **THE WITNESS: Okay. Yes.**  
 10 **Q If you could turn to the -- you'll see that the -- it's**  
 11 **marked Exhibit 4 Howard deposition. The first page is**  
 12 **a cover letter from me to Attorney Howe. If you look**  
 13 **at the third page. Do you recognize this document?**  
 14 **A Yes.**  
 15 **Q What is this document?**  
 16 **A It's an extended -- it's a warranty basically.**  
 17 **Extended service coverage warranty document.**  
 18 **Q When did you first see this document?**  
 19 **A As far as the date, I don't remember when I saw it.**  
 20 **Q But have you seen it before today?**  
 21 **A Yeah. I signed it.**  
 22 **Q Where did you sign it?**  
 23 **A Down on the lower left-hand corner. That is my**  
 24 **signature.**

10 DEPOSITION OF DONALD MEDBERY, a witness  
11 called on behalf of the Defendant, pursuant to  
12 Federal Rules of Civil Procedure 30 and 45, before  
13 Camille Palladino-Duffy, Registered Professional  
14 Reporter and Notary Public in and for the State of  
15 New Hampshire, at the Marriott Residence Inn, 1  
16 International Drive, Portsmouth, New Hampshire, on  
17 Thursday, May 12, 2005, commencing at 10:04 a.m.

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25 978-409-9090  
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1 for their, you know, for their software for specs,  
 2 specking out a truck.  
 3 Q. All right. Does Spec Pro 1.11 identify  
 4 proprietary Sterling software?  
 5 A. Right.  
 6 Q. And you, as a salesman, had access to that  
 7 software --  
 8 A. Correct.  
 9 Q. If you were generating a proposal --  
 10 A. Uh-huh.  
 11 Q. -- how would you use that software? What inputs  
 12 would you make into that software?  
 13 A. What inputs I would use?  
 14 Q. Yes.  
 15 A. Well, first of all, you just call up the standard  
 16 chassis, which is the, you know, the LT 9500, and  
 17 then that would automatically -- everything that  
 18 was standard on the truck would pop up. And then  
 19 you'd start working from there, depending on what  
 20 the customer wanted as far as engines and  
 21 transmissions and rear-ends and suspensions and  
 22 what not, instrumentation and frames. And when  
 23 you do all that, you would just input it in there  
 24 and it would automatically convert it over and you

1 just print it out.

2 Q. When you would input a particular piece of  
 3 equipment a customer had said he wanted on the  
 4 truck, would this Spec Pro 1.11 program  
 5 automatically adjust any other equipment on the  
 6 truck to accommodate the new specification you had  
 7 input?

8 A. Well, if you put in an engine, then you would  
 9 get -- if it didn't -- it wouldn't automatically  
 10 supplement the transmission or whatever. It would  
 11 just tell you -- I've worked with a lot of these  
 12 systems in my career so I can't specifically say  
 13 what Sterling's is now because I try to blank out  
 14 everything that happened at Sterling.

15 So what would normally happen would be an  
 16 asterisk or something would come up, or a message  
 17 would come up and say, you know, "horsepower  
 18 exceeds the limits of the standard transmission  
 19 and you must pick another transmission to go into  
 20 that grade," and stuff like that.

21 Q. You've worked with a lot of these. I haven't  
 22 worked with any of them.

23 A. I understand.

24 Q. And that's why I'm trying to understand generally

1 how they work.  
 2 This is a proprietary Sterling software that,  
 3 as you enter specifications into the software, it  
 4 is designed to alert you to the fact -- or to  
 5 alert you if what you have entered creates an  
 6 issue as to the --  
 7 A. Correct.  
 8 Q. -- as to the standard --  
 9 A. Just --  
 10 Q. -- truck?  
 11 A. If there's a non-compliance factor entered there.  
 12 Q. Okay. And did you make use of that Sterling  
 13 proprietary software throughout your discussions  
 14 with Mr. Howard with respect to these trucks that  
 15 his company ultimately bought?  
 16 A. Well, we speced it out for what the loads are, so  
 17 we would put the correct specifications in. But  
 18 we would work -- but you got to remember, we also  
 19 worked with the suppliers, the component  
 20 suppliers, like your supplier at Caterpillar,  
 21 Cummins or Detroit, and Fuller transmissions,  
 22 Eaton transmissions or rear ends. And we would --  
 23 the factory would allow you to do so much and  
 24 that's why you have gross, you know, GCW, you

1 know, combined gross weight. And then if it got  
 2 beyond that, then you had to get, you know,  
 3 approval by engineering.

4 Q. Did you, yourself, have any communications with  
 5 Southworth-Milton in connection with Mr. Howard's  
 6 purchase of these trucks?

7 A. Well, that's a common thing that happens. The  
 8 engine supplier, transmission people, whatever,  
 9 whatever it was that was going to go into a truck  
 10 and when an order for 22 trucks comes up, they are  
 11 all around there sniffing at your door.

12 So, I mean, they all want the business, so  
 13 they come up with their recommendations and then  
 14 they, obviously, you send them down to see  
 15 Mr. Howard because he's buying the truck and let  
 16 them all do the battle on the battle ground down  
 17 there and you sit back and watch it until the  
 18 smoke clears.

19 Q. Did --

20 A. And then you end up with a set of specs.

21 Q. Who from Southworth-Milton do you remember talking  
 22 to about this particular transaction?

23 A. A very, very knowledgeable guy named Harry  
 24 Calderbank.

1 Q. What do you remember Harry Calderbank telling you  
 2 and what do you remember telling Harry Calderbank?  
 3 A. I'm sure we had several conversations because we  
 4 didn't only talk about Mr. Howard's trucks, we  
 5 talked about many, many trucks. Conversations  
 6 always went the same way. Just want to make sure  
 7 that what we prepared would do the job for the  
 8 application. That's what our job is.  
 9 Q. Well, tell me in a little more detail what you  
 10 mean by that?  
 11 A. Well, if you, obviously, not only Harry Calderbank  
 12 was involved, you have a regional representative  
 13 from Caterpillar factory as Cummins does and  
 14 Fuller does, and all of them, and they get  
 15 involved when the number gets up. Even they get  
 16 involved sometimes when it's only onesies or  
 17 twosies, because you want to make sure you're not  
 18 getting out of the box.  
 19 Q. I'm going to ask you about the people from  
 20 Caterpillar that you dealt with in a minute, but  
 21 what I want to find out is your best memory of the  
 22 discussions that you had with Mr. Calderbank  
 23 concerning this transaction.  
 24 A. Well, Mr. Calderbank had a -- also had a

30

31

1 computer-generated specifications and it came  
 2 directly from Caterpillar. And he would run that  
 3 specs off so that I could input them into my  
 4 specifications so that we have the correct engine  
 5 application and for torque and horsepower for the  
 6 proposed application that it's going to be  
 7 introduced into.  
 8 Q. So, I take it then, that Mr. Calderbank provided a  
 9 document to you that contained various parameters  
 10 for the engines that he was talking with you  
 11 about?  
 12 A. Everything. It would be fuel economy, it would be  
 13 road speeds, gradability, miles per gallon, just  
 14 about anything you'd want to know before so that  
 15 you know that when you bought it, you know what  
 16 you got.  
 17 Q. Do you remember, other than fuel economy, road  
 18 speed, gradability, miles per gallon, what other  
 19 information he gave you about the engine?  
 20 A. Well, I can only say that every engine  
 21 representative, including Mr. Calderbank, was  
 22 always exuberant about what their engine would do.  
 23 It was always better than the other guys. So,  
 24 that's what you have to do because that's what you

32

1 have to believe in.  
 2 Q. Being a salesman yourself --  
 3 A. I understand that. And he was very, very  
 4 thorough. Harry Calderbank was a very, very  
 5 thorough guy. He was knowledgeable and very -- he  
 6 just didn't want to do the wrong thing. I mean,  
 7 he was very conscientious. Still is to this day,  
 8 I imagine, if he's still alive.  
 9 Q. He's not in Massachusetts anymore.  
 10 A. Okay.  
 11 Q. Do you remember when he actually gave you a  
 12 document to look at?  
 13 A. Oh, yeah. I mean, I would have. I wouldn't be  
 14 able to do -- I would never proceed on my own just  
 15 because I think I'm smart, I wouldn't proceed in  
 16 set up a set of specifications for a customer for  
 17 one truck, let alone 22 without documentation from  
 18 the -- not only from him, but from the other guys.  
 19 Q. Well, just talking about Mr. Calderbank for now --  
 20 A. Okay.  
 21 Q. -- I take it he gave you a document that had data  
 22 in it such as fuel economy, road speed,  
 23 gradability, miles per hour, horsepower --  
 24 A. Performance.

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1 Q. -- torque --  
 2 A. Performance capability.  
 3 Q. And you would then input that data into this Spec  
 4 Pro 1.11 --  
 5 A. Correct.  
 6 Q. -- program?  
 7 A. Correct.  
 8 Q. And how would that Spec Pro 1.11 program  
 9 manipulate the engine data that you were  
 10 inputting?  
 11 A. Well, the only data you put in was the engine  
 12 itself because in the model -- in the exact model  
 13 and the rating, and the Spec Pro was already  
 14 programmed to handle all the engines, you know,  
 15 handle Caterpillar's engine requirements and their  
 16 specifications, you know, to be presented in the  
 17 chassis.  
 18 Q. All right. So if I understand correctly then,  
 19 what you input into Spec Pro was, in this case,  
 20 C-12 engine?  
 21 A. Right, C-12.  
 22 Q. And what other information about the engine would  
 23 you put in?  
 24 A. I put in horsepower and torque.

1 Q. And you then relied on this proprietary Sterling  
 2 software to determine what the various specific  
 3 parameters of those engines would be and how they  
 4 would fit in this Sterling truck overall?

5 A. Well, what it would do is, specifically, it would  
 6 tell you that if you wanted a 10-speed  
 7 transmission, it would punch out the 10-speed with  
 8 the torque limits in it. And if you wanted a  
 9 40,000 pound rear axle, it would punch out the  
 10 rear axle. And if you wanted the ratio, it would  
 11 tell you, you know, what the ratios are, you know,  
 12 that you are going to use, it's going to produce  
 13 the road speed and where the fuel economy would be  
 14 most efficient, and it would do the same thing --

15 These were friendly systems or software  
 16 systems that were compatible and they would do the  
 17 same thing on both ends. His would tell -- Harry  
 18 Calderbank's would tell you all the same things  
 19 that Minuteman's would tell you because  
 20 Minuteman -- not Minuteman -- Sterling would get  
 21 all that information from Cat corporate, see, and  
 22 they worked in conjunction with Cat corporate so  
 23 that they had all these compatible information  
 24 plugged in.

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1 Q. Now, what information did you give Mr. Calderbank  
 2 about the specifications that you had generated in  
 3 connection with the transaction that Mr. Howard  
 4 was contemplating?

5 A. He would already have it and he would already do  
 6 his own research. He would present me with the  
 7 stuff that he printed out and he would have the  
 8 same information I had.

9 Q. I'm not --

10 A. So I didn't present him with any information other  
 11 than the fact that we have a truck and we can put  
 12 his engine in it and it's all accepted, and where  
 13 do we go from here, Harry?

14 Q. I'm not asking you about information that you gave  
 15 him about the engine, I'm asking you what  
 16 information you gave Mr. Calderbank about the  
 17 specifications for the truck that you had been  
 18 generating over the course of these many  
 19 iterations of quotations that you were putting  
 20 together on your computer?

21 A. Well, you got -- he got a copy of this. We would  
 22 present him a copy of this so he could understand  
 23 exactly what was going on, but we would discuss  
 24 the axles, transmissions, weights, it was all

1 covered.

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2 Q. Now, did you give Mr. Calderbank a copy of more  
 3 than one --

4 A. Probably not.

5 Q. -- quotation that you put together?

6 A. Probably not. I think he probably had a copy of  
 7 the -- when I worked with him and he gave me his  
 8 information, I plugged the information in. When  
 9 it was all finalized, if he wanted a copy of it,  
 10 I'd give it to him.

11 Q. What if he didn't ask you for a copy?

12 A. Then I wouldn't give it to him.

13 Q. Do you remember specifically giving him any  
 14 specification proposals similar in type to Exhibit  
 15 Howard No. 2?

16 A. I would say I don't remember it now.

17 Q. So you don't know whether you actually gave it to  
 18 him or not?

19 A. No.

20 MR. SAMITO: Objection.

21 MR. GRUNERT: Q. Do you remember how many  
 22 versions of the specification proposals you put  
 23 together over the course of negotiating with  
 24 Mr. Howard to arrive at the final specifications?

1 A. Several.

2 Q. Do you remember when during the negotiation  
 3 process with Mr. Howard whereby you came up with  
 4 these revised proposals? Do you remember when in  
 5 that process you had your meeting or meetings with  
 6 Mr. Calderbank?

7 A. Yeah, when Mr. Calderbank called me and said that  
 8 Mr. Howard was going to go with Cat engines.

9 Q. So that's when you went and had your meeting with  
 10 Mr. Calderbank and he gave you the --

11 A. Final specifications.

12 Q. -- specifications for the C-12?

13 A. Right.

14 Q. After that point in time, did you have any other  
 15 meetings with Mr. Calderbank to go over with him  
 16 any changes that had been made to the  
 17 specifications, the truck specifications?

18 A. Not that I recollect.

19 Q. Did you keep any notes of your meetings with  
 20 Mr. Calderbank?

21 A. They are all in the bottom of the landfill in  
 22 Rochester, New Hampshire. Anything to do with  
 23 this transaction and Minuteman is in the bottom of  
 24 the landfill.

1 Q. So the answer is you made notes, but they have  
2 been disposed of?  
3 A. I made lots of notes. Lots of notes.  
4 Q. Now, you said that you also interacted in  
5 connection with this transaction with one or more  
6 individuals from Caterpillar's regional office.  
7 Do you remember who those people were?  
8 A. Nope. It was a guy that came up from Connecticut.  
9 I don't remember him. So, I usually remember all  
10 those guys but, obviously, he didn't make much of  
11 an impression on me, but they usually came in and  
12 they blew all their smoke and then they'd leave  
13 town. They'd leave the water carrying up to guys  
14 like Harry Calderbank.  
15 Q. Do you remember specifically what discussions you  
16 had with the person from the Caterpillar district  
17 office in connection with the transaction that you  
18 were negotiating with Mr. Howard?  
19 A. I believe the discussion would be very brief  
20 because, you know, you really like to deal with  
21 the local guys, but these factory guys like to  
22 come in and touch base with everybody, which is  
23 what their job is, but I can't remember the guy's  
24 name, which is very unusual, but I can't remember

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1 the guy's name, so I remember that he came -- on  
2 this particular deal, he ended up going to the  
3 dealership a couple of times and talking to the  
4 owner of the company.  
5 And then he had a visit with me, maybe once  
6 or twice, but it's more or less the fact to let us  
7 know at Sterling that Caterpillar wanted this  
8 transaction. They wanted this deal.  
9 Q. All right. Did you discuss things like discounts  
10 on the engines or financial terms?  
11 A. No -- excuse me. I didn't mean to interrupt. We  
12 didn't deal with that. He dealt with Harry.  
13 Q. Okay. Did you discuss with the individual from  
14 the district office the detailed specifications  
15 that you had put together for these trucks?  
16 A. More than likely, but I can't recollect that.  
17 Q. No memory?  
18 A. You know, more than likely we discussed it with  
19 every guy that contacted us regarding the  
20 specifications.  
21 Q. Would you -- do you think that you discussed with  
22 the individual from the district office the type  
23 of transmission that was going to be in the  
24 trucks?

1 A. Oh, I'm sure we discussed that because he's  
2 checking up on the local guys. So, I mean, I'm  
3 sure that all comes into the discussion.  
4 Q. Do you remember what kind of transmission you told  
5 the person from the district office was going to  
6 be in the trucks?  
7 A. No, I can't really say that I remember I told him  
8 what kind of transmission would be in the trucks.  
9 Q. Do you remember talking about how the frame of the  
10 trucks was going to be designed?  
11 A. No, because Sterling makes that determination at  
12 the engineering level at the factory.  
13 Q. When you talked with the fellow from the district  
14 office, did you mostly talk to him about things  
15 such as the weight and the loads that these trucks  
16 were going to be carrying and items of that sort?  
17 A. Not -- no, not, because that was normally done  
18 through Harry Calderbank and he submitted that to  
19 Peoria on an approval basis.  
20 Q. I'd like you to tell me as best you can what you  
21 actually remember telling the fellow from  
22 Caterpillar about these trucks that you were  
23 negotiating with Mr. Howard about?  
24 A. Not anything different than what I would

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1 ordinarily talk to the Cummins guy or anything  
2 else. I know that I'm a very thorough guy, as far  
3 as discussing specifications, performance, and  
4 getting -- and making sure that the customer has,  
5 you know, gets what he pays for.  
6 Q. Do you remember what you told the fellow from  
7 Caterpillar about the nature of Mr. Howard's  
8 business?  
9 A. I don't think I would discuss that with the guy  
10 from Caterpillar.  
11 Q. All right. In terms of performance requirements,  
12 do you recall what you told the fellow from  
13 Caterpillar?  
14 A. No. No.  
15 Q. In terms of specifications, do you know what you  
16 told the fellow from Caterpillar?  
17 A. Well, we would discuss the general specifications.  
18 I mean, that's -- normally, the engine would be  
19 the -- because he's the engine rep, that would be  
20 the real meat of the conversation, and I can only  
21 tell you this, that the C-12 was an engine that  
22 they really bet their -- they really bet their  
23 load on. So they were bragging that engine up  
24 like there was no tomorrow.